

## Remarks

Applicant thanks the Examiner for the Written Office Action. In particular, Applicant thanks the Examiner for pointing out the antecedent basis issue in claim 2. Additionally, Applicant thanks Examiner for noting that claim 9 is “allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.”

With regards the substantive portion of the Written Office Action, the Office Action indicated that in claim 2 the limitation “the cylindrical portion” had insufficient antecedent basis. The Office Action rejected, under 35 U.S.C. § 102, claims 3-5 as being anticipated by U.S. Patent No. 5,507,044 by Williamson et al. (“Williamson”) and claims 6-8 as being anticipated by U.S. Patent No. 6,401,280 to Baker (“Baker”). The Office Action rejected, under 35 U.S.C. § 103, claims 1-2 as being unpatentable over U.S. Patent No. 5,400,450 to Leoutsakos (“Leoutsakos”) in view of U.S. Patent No. 6,138,301 to Battison (“Battison”), and further in view of U.S. Patent No. 5,448,791 to Brown (“Brown”). The Office Action objected to claim 9 as being dependent upon a rejected base claim, but noted claim 9 “would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.”

Claims 1 – 3, 6, 8 and 9 are amended. New claims 10 – 11 are added. The majority of the amendments are for clarity and to broaden the claims where appropriate. Applicant believes the new claims to have adequate support in the specification. In particular, the new claims are at least supported by figure 16.

### **Claim Rejections – 35 U.S.C. § 102**

In the Office Action, claims 3-5 were rejected under 35 U.S.C. § 102(b) as being unpatentable over U.S. Patent No. 5,507,044 to Williamson et al. In formulating this rejection, the Office Action disregarded the limitation “designed to fit under a cushion-type portion of the furniture” reasoning “it has been held that a recital with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from prior art apparatus satisfying the claimed structural limitations.”

All instances of the word “designed” in the claims of the application have been changed to “configured.” Where the word designed may be interpreted to denote a purpose or intention, the word configured clearly denotes functional limitations. The Applicant respectfully submits that claims 3-5 are patentable over U.S. Patent No. 5,507,044 to Williamson et al. The disregarded limitation “designed to fit under a cushion-type portion of the furniture” has been changed to “configured to fit under a cushion-type portion of the furniture.” This change more clearly indicates a structural limitation, not a manner of employment. It is apparent that Williamson is not “configured to fit under a cushion-type portion of the furniture” and further, would require structural changes before it could be “configured to fit under a cushion-type portion of the furniture.” If the invention of Williamson were placed under a cushion-type portion of furniture it would not fit without difficulty because of its design and may even damage the furniture or occupant of the furniture.

Additionally, the law cited in the Office Action, 2 USPQ2d 1647 (1987) and found in MPEP 2114, relates to means-plus function claim language. Specifically, the

doctrine of 2 USPQ2d 1647 relates to the language “for mixing flowing developing material.” The word “for” as used in 2 USPQ2d 1647 merely denotes a purpose or mode of use. The words “configured to” carry a different meaning and are not means-plus function language. The words “configured to” denote structural limitations not a mode of use, where design of a component entails configuring the structure of the component. Therefore, applicant respectfully submits that claims 3-5 are patentable over Williamson.

In the Office Action, claims 6-8 were rejected under 35 U.S.C. § 102(b) as being unpatentable over U.S. Patent No. 6,401,280 to Baker. Claim 6 has been amended to include the limitation “wherein, in the folded position, adjacent legs of the U-shaped base and the U-shaped handle are in planes substantially perpendicular to the planes of the U-shaped base and U-shaped handle.” Claims 7-9 depend from claim 6. Baker does not teach “wherein, in the folded position, adjacent legs of the U-shaped base and the U-shaped handle are in planes substantially perpendicular to the planes of the U-shaped base and U-shaped handle.” Applicant respectfully submits that claims 6-8 are in condition for allowance.

#### **Claim Rejections 35 U.S.C. § 103(a)**

In the Office Action, claims 1-2 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Leoutsakos in view of Battiston and in further view of Brown. Applicant respectfully submits that the Office Action does not include a *prima facie* case for an obviousness rejection of claims 1-2. The Office Action does not include a suggestion or motivation to combine the cited references. Further, Brown does not include the limitation for which it is cited.

“It is insufficient that the prior art disclosed the components of the patented device, either separately or used in other combinations; there must be some teaching, suggestion, or incentive to make the combination made by the inventor.” *Northern Telecom, Inc. v. Datapoint Corp.*, 908 F.2d 931, 934 (Fed. Cir. 1990) See e.g. *Interconnect Planning Corp. v. Feil*, 774 F.2d 1132, 1143, 227 USPQ 543, 551 (Fed.Cir.1985). To establish *prima facie* obviousness, there must be some suggestion or motivation to modify the reference or to combine reference teachings to arrive at the claimed invention. “The teaching or suggestion to make the claimed combination ... must be found in the prior art, not in applicant's disclosure.” MPEP 2143, citing *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). “The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination.” See MPEP 2143.01, citing *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990).

Leoutsakos discloses a planar base member, a receiving portion, a connector and a handle. Leoutsakos does not, at any time, suggest nor does it provide any motivation to combine the previously listed limitations with an adjustable portion including a plurality of apertures and a spring button. Further, Leoutsakos does not at any time suggest nor does it provide any motivation to combine the previously listed limitations with “a connector designed to connect the receiving portion to the base member,” wherein the connector includes a C-shaped connector.

Battiston discloses a device having an adjustable portion including a plurality of apertures and a spring button. Battiston does not, at any time, suggest nor does it provide

any motivation to combine the previously listed limitation with a planar base member, a receiving portion, a connector and a handle.

Brown discloses a device with a C-shaped bracket configured to removably attach to a bed frame. (cols 3-4, Brown '791). The cited limitation in Brown is significantly different from "a connector designed to connect the receiving portion to the base member," including a C-shaped connector. In particular, Applicant points to the differences between "removably attach" and "connect" as well as the differing attachment points, namely connecting to a "bed frame" as opposed to "a planar base member." Further, Brown does not, at any time, suggest nor does it provide any motivation to combine the previously listed limitation with a planar base member, a receiving portion, a connector and a handle.

### Conclusion

For these reasons, it is believed that none of the prior art teaches the claimed invention. Furthermore, it is believed that the foregoing amendment has adequate support in the specification, and accordingly there should be no new matter. Applicant believes the pending claims have addressed each of the issues pointed out by the Examiner in the Office Action. In light of the foregoing amendment, the claims should be in a condition for allowance. Should the Examiner wish to discuss any of the proposed changes, Applicant again invites the Examiner to do so by telephone conference.

Respectfully Submitted,



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Date: 12/20/09

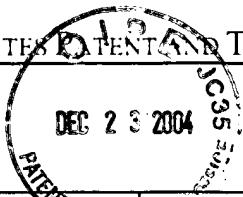
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**Amendments to the Drawings**

None



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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/764,903	01/26/2004	Troy Miller	3010.2.2CIP	2320
36491	7590	09/21/2004		
KUNZLER & ASSOCIATES 8 EAST BROADWAY SALT LAKE CITY, UT 84111			EXAMINER	CONLEY, FREDRICK C
			ART UNIT	PAPER NUMBER
			3673	

DATE MAILED: 09/21/2004

09/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.



Office Action Summary DEC 23 2004

**Application No.**

10/764,903

Examiner

Fredrick C Conley

**Applicant(s)**

MILLER, TROY

## Art Unit

3673

Ali

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## A SHORTEN

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

1)  Responsive to communication(s) filed on 26 January 2004.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

4)  Claim(s) 1-9 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1-8 is/are rejected.

7)  Claim(s) 9 is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date

4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_ .

5)  Notice of Informal Patent Application (PTO-152)

6)  Other: \_\_\_\_ .

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 2 recites the limitation "the cylindrical portion". There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 3-5 are rejected under 35 U.S.C. 102(b) as being U.S. Pat. No. 5,507,044 by Williamson et al.

Claim 3, Williamson discloses an assistance device for assisting a user in getting into and out of various body positions on a piece of furniture comprising:

a base 14 having a horizontal and vertical;

at least one leg 28 having a first end rotatably attached to the base to extend vertical from the horizontal dimension of the base, and desired to rotate along a plane that is perpendicular to the horizontal dimension of the base;

a handle 106 rotatably coupled to a second end of the at least one leg; and a locking device functionally coupled to the at least one leg, and desired to maintain the at least one leg in a fixed vertical position and to allow rotation of the at least one leg (col. 7 lines 15-20). With regards to the Applicant's recitation "designed to fit under a

cushion-type portion of the furniture" it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. Ex parte Masham, 2 USPQ2d 1647 (1987)

Claim 4, wherein the locking device is located on the handle and engages the leg to maintain the leg in at least a vertical position (col. 7 lines 3-20).

Claim 5, wherein the handle maintains a horizontal orientation to the base while being pivoted (fig. 5).

Claims 6-8 are rejected under 35 U.S.C. 102(b) as being U.S. Pat. No. 6,401,280 to Baker.

Claim 6, Baker discloses an assistance device for assisting a user in getting into and out of various body positions on a piece of furniture comprising:

a U-shaped base 40 having: a horizontal and vertical dimension, and a first and second end facing a same direction;

an first and second attachment bracket (fig. 4) coupled to the first and second end of the base respectively;

a U-shaped handle 12 having a first and second handle end respectively coupled to the first and second brackets to enable the handle to maintain a vertical position with respect to the base when the first and second brackets are in a locked position (fig. 3), and to be maintain a folded position (fig. 2) with the handle being parallel to the base when the first and second brackets are in an unlocked position.

Claim 7, wherein the base is formed of a tubular member.

Claim 8, wherein the first and second brackets each comprise an axel that is permanently coupled to the bracket and respective first and second ends of the handle to allow the handle to rotate about the handle.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-2 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 5,400,450 to Leoutsakos in view of U.S. Pat. No. 6,138301 to Battiston, and further in view of U.S. Pat. No. 5,448,791 to Brown.

Claim 1, Leoutsakos discloses a device for assisting a user in getting into and out of sitting and prone positions on a bed, the device comprising;

a planar base member 20 desired to fit between the mattress and box spring of the bed;

a receiving portion (22,23); a connector 24, and a handle 39. Leoutsakos fails to disclose the handle having an adjustable portion including a plurality of apertures and a spring button. Battiston discloses an device having an adjustable portion including a plurality of apertures 54 arrayed in serial fashion that are desired to correspond to a spring button 56. It would have been obvious to one having ordinary skill in the art at the time of the invention to employ an adjustable portion as taught by Battiston in order

to adjust the height of the handle of Leoutsakos to locations at predetermined points.

Leoutsakos also fails to disclose the connector including a C-shaped bracket. Brown discloses a device with a C-shaped bracket 68. It would have been obvious to one having ordinary skill in the art at the time of the invention to have the connector C-shaped as taught by Brown in order to secure to the walls of the base member of Leoutsakos and provide adequate support for the handle.

Claim 2, wherein Leoutsakos, as modified, discloses the bracket including apertures 25 for receiving bolts, which also pass through corresponding apertures in the base member (col. 3 lines 47-51)(Leoutsakos).

#### ***Allowable Subject Matter***

Claim 9 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fredrick C Conley whose telephone number is 308-7468. The examiner can normally be reached on m-th m-fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather Shackelford can be reached on 308-2978. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

FC

*michael Trettel*  
MICHAEL F. TRETTEL  
PRIMARY EXAMINER  
ART UNIT 358

**Notice of References Cited**

 Application/Control No.  
 10/764,903

 Applicant(s)/Patent Under  
 Reexamination  
 MILLER, TROY

 Examiner  
 Fredrick C Conley

 Art Unit  
 3673  
 Page 1 of 1

**U.S. PATENT DOCUMENTS**

*	Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	Classification
A	US-6,401,280 b1	06-2002	Baker, Amy C.	5/662
B	US-6,138,301 a	10-2000	Battiston, Joseph	5/81.1R
C	US-5,507,044 a	04-1996	Williamson et al.	5/81.1RP
D	US-5,400,450 a	03-1995	Leoutsakos, Thomas	5/662
E	US-5,448,791 a	09-1995	Brown, David J.	5/662
F	US-			
G	US-			
H	US-			
I	US-			
J	US-			
K	US-			
L	US-			
M	US-			

**FOREIGN PATENT DOCUMENTS**

*	Document Number Country Code-Number-Kind Code	Date MM-YYYY	Country	Name	Classification
N					
O					
P					
Q					
R					
S					
T					

**NON-PATENT DOCUMENTS**

*	Include as applicable: Author, Title Date, Publisher, Edition or Volume, Pertinent Pages)
U	
V	
W	
X	

A copy of this reference is not being furnished with this Office action. (See MPEP § 707.05(a).)  
 Dates in MM-YYYY format are publication dates. Classifications may be US or foreign.



PATENT APPLICATION  
Docket No.: 3010.2.2 CIP

CERTIFICATE OF MAILING

Date of Deposit: 20 December 2004

I hereby certify that this Response to Office Action, along with copy of Office Action Summary mailed 09/21/2001, and Return Postcard, are being deposited with the United States Postal Service Post Office by First Class mail to Addressee service under 37 C.F.R. § 1.8 on the date indicated above in an envelope addressed to Mail Stop Amendment No Fee, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450.

Respectfully submitted,

  
\_\_\_\_\_  
Meera Rajaram or Dian Herring  
Assistant to Michael W. Starkweather

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